

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 18, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALFREDO MAGANA GARIBAY,

Defendant.

No. 4:15-CR-6049-EFS-18

**ORDER REGARDING SCHEDULE FOR
SENTENCING**

On this day, Defendant, accompanied by his attorney, Nicholas Marchi, appeared and pleaded guilty or was found guilty in this matter. The Government was represented by Stephanie Van Marter, Assistant United States Attorney.

IT IS ORDERED that the date of the sentencing is **Wednesday, December 12, 2018, at 10:30 AM in RICHLAND.** If a sentence of incarceration is imposed, the Defendant shall be placed in custody at the time of sentencing. Sentencing will be scheduled for a total of forty-five (45) minutes. If it is believed that the sentencing hearing will last longer, counsel shall contact Chambers within fourteen (14) days of disclosure of the presentence investigation report. Pending sentencing, Defendant's detention status or release status shall remain pursuant to this court's previous order. The United States Probation

1 Office shall prepare a timely presentence investigation report that will
2 comply with the following schedule:

3 1. Not less than **thirty-five (35) days** prior to the sentencing
4 hearing, the probation officer shall disclose the pre-sentence
5 investigation report to the Defendant, counsel for Defendant, and the
6 Government.

7 2. Within **fourteen (14) days** of the disclosure of the pre-sentence
8 investigation report, counsel shall communicate in writing to the
9 probation office any objections they may have as to factual errors or
10 omissions; sentencing classifications; conditions of supervised
11 release/probation; sentencing guideline ranges; and policy statements
12 contained in or omitted from the report. Such communication may be
13 oral initially but shall immediately be confirmed in writing to the
14 probation officer and opposing counsel.

15 3. Also within **fourteen (14) days** of disclosure of the presentence
16 investigation report, counsel shall file and serve all motions and
17 memoranda pertaining to Defendant's sentence, including motions for
18 downward or upward departures. Counsel shall utilize the following
19 format when preparing initial memoranda which are limited to twenty
20 pages (absent prior Court permission to file an overlength brief): I.
21 Base Offense Level & Enhancements, II. Departures, III. 18 U.S.C.
22 3553(a). Under the "Base Offense Level & Enhancements" section, counsel
23 shall discuss whether the PSIR's Total Offense Level calculations (not
24 including departures) are correct or incorrect, providing legal
25 authority for the party's position. Under the "Departure" section,
26 counsel shall discuss whether a downward and/or upward departure is

1 warranted under the Guidelines and provide legal authority for such
2 position. Under the "18 U.S.C. 3553(a)" section, counsel shall discuss
3 whether the resulting guideline range provides a reasonable sentence
4 sufficient, but not greater than necessary, to comply with the purposes
5 set forth in 18 U.S.C. 3553(a)(2), considering the other factors listed
6 in 3553(a), and whether the party is challenging a recommended standard
7 or special condition of supervised release. The parties are limited to
8 one reply of no more than 7 pages. No other pleadings are allowed without
9 advance permission of the Court. **FAILURE TO FILE AND SERVE A MOTION FOR**
10 **DOWNWARD DEPARTURE WITHIN 14 DAYS OF RECEIPT OF THE PRESENTENCE**
11 **INVESTIGATION REPORT WILL BE DEEMED A WAIVER OF THE RIGHT TO DO SO.** The
12 time frame for filing and serving responses to such motions shall be
13 governed by Local Rule 7.1. Any request with regard to self-reporting
14 shall be made to the probation office at the same time any
15 objections/motions are filed.

16 4. After receiving counsel's objections, the probation officer
17 shall conduct any further investigation and make any revisions to the
18 presentence report that may be necessary. The probation officer may
19 require counsel for both parties to meet with the officer to discuss
20 unresolved factual and legal issues, and counsel shall make themselves
21 available for that purpose.

22 5. At least **ten (10) days** prior to the date of the sentencing
23 hearing the probation officer shall submit the presentence report to
24 the sentencing judge. The report shall be accompanied by an addendum
25 setting forth any objections counsel may have made, including those that
26 have not been resolved, together with the officer's comments and

1 recommendations thereon. The probation officer shall certify that the
2 contents of the report other than sentencing recommendations, including
3 any revisions or addenda, have been disclosed to counsel for Defendant
4 and the Government, and that the addendum fairly states any remaining
5 objections.

6 6. Except with regard to any written objection made under
7 subdivision (a), the report of the presentence investigation and
8 computations shall be accepted by the Court as accurate. For good cause
9 shown, however, the court may allow a new objection to be raised at any
10 time before the imposition of sentence. In resolving disputed issues
11 of fact, the court may consider any reliable information presented by
12 the probation officer, Defendant, or the Government.

13 7. Nothing in this rule requires the disclosure of any portions
14 of the presentence report that are not disclosable under Rule 32 of the
15 Federal Rules of Criminal Procedure.

16 8. The presentence report shall be deemed to have been disclosed
17 (1) when a copy of the report is physically delivered; or (2) one day
18 after the availability of the report for inspection is orally
19 communicated; or (3) three days after a copy of the report, or notice
20 of its availability is mailed to counsel, whichever date is earlier.

21 9. Following sentencing, Defendant shall be taken into the
22 custody of the United States Marshal Service unless (1) Defendant has
23 been released prior to sentencing, (2) Defendant specifically requests
24 the opportunity to self-report, and (3) Defendant demonstrates that he
25 is a candidate for self-reporting. If Defendant requests the
26

1 opportunity to self-report, Defendant must demonstrate the financial
2 ability to travel to a facility on the East Coast.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
4 order and to provide copies to counsel, the U.S. Probation Office, and
5 the U.S. Marshals Service.

6 **DATED** this 18th day of September 2018.

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8 s/Edward F. Shea
9 EDWARD F. SHEA
10 Senior United States District Judge
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